

U.S. COURTS

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U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO
The Honorable Terry L. Myers
Chapter 7

8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF IDAHO

10 In re:

11 FRANK L. CHAPIN and SYDNEY
12 GUTIERREZ-CHAPIN,

13 Debtor.

NO. 02-20218

REPLY OF DR. FREDERICK A. LEAF IN
SUPPORT OF MOTION FOR ORDER
CLARIFYING INAPPLICABILITY OF
AUTOMATIC STAY

14 COMES NOW, Dr. Frederick A. Leaf ("Leaf"), by and through his attorneys of record,
15 John R. Rizzardi and Cairncross & Hempelmann, P.S., and submits this reply in support of his
16 Motion for Order Clarifying Inapplicability of Automatic Stay (the "Motion"). The opposition
17 of the Debtors is fully without merit, because contrary to the Debtors' allegations, (1) Leaf does
18 have independent claims against the Non-Debtor Entities, (2) the Chapter 7 trustee has consented
19 to the relief requested in the Motion and the Debtor has no further authority to speak on behalf of
20 the Non-Debtor Entities, and (3) there is no exception to the general rule in the Ninth Circuit that
21 the automatic stay is inapplicable to parties other than the Debtors.
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REPLY OF DR. FREDERICK A. LEAF IN
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CLARIFYING INAPPLICABILITY OF
AUTOMATIC STAY - 1

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1 As has been set forth in Leaf's Motion, the Idaho District Court action has been pending
2 since December 11, 2002. At no time during the course of the proceedings did any named Non-
3 Debtor Entity appear or approach Plaintiff, either pro se or with counsel. At no time during the
4 pendency of the proceedings did the Debtor assert to this Court that the proceedings should be
5 stayed. An Order of Default has been entered, and it was due only to the submission of an
6 inaccurate letter from the Trustee to the Idaho District Court that matters were held in abeyance.

7 Leaf further states as follows:

8 1. Leaf has independent claims against the Non-Debtor Entities. The Idaho District
9 Court lawsuit alleges that the Non-Debtor Entities are liable to Leaf for conversion; unjust
10 enrichment; the imposition of a resulting and/or constructive trust; and indemnification, setoff,
11 contribution, and/or subrogation. The elements of these causes of action are set forth at pages 16
12 through 18 of the Complaint and Demand for Jury Trial, a copy of which is attached as Exhibit A
13 to the Debtor's Objection to the Motion. The Debtors are not named defendants in the Idaho
14 District Court lawsuit, and none of these causes of action involves a claim against the Debtors.
15 A default judgment in the Idaho District Court lawsuit results in liability only on the part of the
16 Non-Debtor Entities. As to Adversary Proceeding 02-6137, it had been Leaf's intentions to
17 dismiss the Non-Debtor Entities once a judgment was entered in the Idaho District Court Action.
18 The foregoing adversary proceeding has been pending since June of 2002 and no one has entered
19 an appearance for any Non-Debtor Entity.

20 2. The Chapter 7 trustee has consented to the relief requested in the Motion. The
21 Debtors assert, without any factual basis, that "[t]he Chapter 7 Trustee has not yet performed an
22 analysis of whether or not the Chapin entities may or may not be the alter-egos of the Debtors."
23 (Objection para. 7, at 3.) However, the Notice of Motion for Order Clarifying Inapplicability of

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1 Automatic Stay (the "Notice") clearly states that "if no response is timely filed and served, the
2 Court may, in its discretion, grant the motion without further notice." (Notice at 2.)
3 Furthermore, Local Bankruptcy Rule 2002.2(c) requires an objecting party to file and serve a
4 written objection by the response deadline. The October 20 deadline expired, and the Chapter 7
5 trustee chose not to object to the Motion. Accordingly, the relief requested in the Motion can be
6 granted without any further action by the Chapter 7 trustee. The Debtors have no standing to
7 assert otherwise, because the Chapter 7 trustee is the only person who speaks for the estate.¹ The
8 Debtor cannot speak for the Non-Debtor Entities because the Debtors' interest is owned by the
9 Trustee. The response filed by Mr. Anderson cannot be on behalf of any of the Non-Debtor
10 Entities because Mr. Anderson does not represent those entities.

11 3. The automatic stay cannot be extended to the Non-Debtor Entities. "As a general
12 rule, '[t]he automatic stay of section 362(a) protects only the debtor, property of the debtor or
13 property of the estate. It does not protect non-debtor parties or their property. Thus, section
14 362(a) does not stay actions against guarantors, sureties, corporate affiliates, or other non-debtor
15 parties liable on the debts of the debtor.'" In re Chugach Forest Prods., Inc., 23 F.3d 241, 246
16 (9th Cir. 1994)(quoting In re Advanced Ribbons & Office Prods., 125 B.R. 259, 263 (Bankr. 9th
17 Cir. 1991)). The Non-Debtor entities are clearly not the Debtors and their property does not
18 belong to the Debtors or their estate, for the reasons set forth in the Motion. To further take this
19 matter out of the realm of the automatic stay, the Non-Debtor entities are not even liable on the
20 debts of the Debtors, but rather their liability is determined independently.

21 ¹ In addition, Leaf questions whether Bruce Anderson can speak on behalf of the Debtors. On October 9, 2003, Mr.
22 Anderson requested that the Court allow his firm to withdraw as attorneys for the Debtors because "conflicts of
23 interest exist and Debtors' counsel can no longer adequately represent Debtors." (Motion to Withdraw as Attorney
of Record and Notice of Hearing.) It is also noteworthy that the Non-Debtor Entities have not objected to the
Motion.

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1 4. The Ninth Circuit has expressly declined to recognize the “unusual
2 circumstances” exception to this general rule. See 23 F.3d at 247. Such circumstances would
3 arise “when there is such identity between the debtor and the third-party defendant that the
4 debtor may be said to be the real party defendant and that a judgment against the third-party
5 defendant will in effect be a judgment or finding against the debtor.” See id. at 246-47 (9th Cir.
6 1994)(quoting In re A.H. Robins Co., 788 F.2d 994, 999 (4th Cir. 1986)). Even if the exception
7 had vitality in the Ninth Circuit, no unusual circumstances are present here. See 23 F.3d at 247.
8 The Non-Debtor Entities are independently liable to Leaf. Any judgment that Leaf obtains in the
9 Idaho District Court lawsuit will not be a judgment against the Debtors, but only against the
10 Non-Debtor Entities. Leaf will still need to prevail against the Debtors in this Court in order to
11 establish their liability to him.

12 5. In light of this binding Ninth Circuit authority, no global stay is possible. The
13 case cited by the Debtors in support of a global stay is inconsistent with Ninth Circuit law. See
14 In re National Century Fin. Enters., Inc., 298 B.R. 133, 139 (Bankr. S.D. Ohio 2003).
15 Furthermore, the National Century opinion extended the automatic stay in circumstances where
16 (1) any judgment against certain non-debtors would automatically create liability against the
17 debtors, (2) the actions would require a determination of ownership of funds alleged to be the
18 debtors’, and (3) the action sought to be stayed would cause a duplication of efforts and waste
19 judicial time and resources. See id. at 139. None of these circumstances is present here. Any
20 judgment in the Idaho District Court lawsuit will result in liability against only the Non-Debtor
21 Entities. The Idaho District Court lawsuit does not require a determination of ownership of
22 funds alleged to be the Debtors’. The Chapter 7 trustee has had ample time to conduct an
23 investigation and has presumably properly concluded that he holds only the Debtors’ ownership

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1 interest in those entities, and that his rights to the assets of the Non-Debtor Entities are inferior to
2 the creditors of the Non-Debtor Entities.

3 Determining that the automatic stay is inapplicable will further reduce any duplication
4 because the Idaho District Court lawsuit will be finally resolved by a default judgment. It is only
5 the Debtors' unwarranted Objection that is wasting not only judicial resources, but also the
6 resources of Leaf. Since 2001, Leaf has been attempting to seek recovery of the funds taken by
7 the Debtors, so that he can restore the funds to the Heirs of the Estate of Christina Leaf. Due to
8 the Debtors' inability to voluntarily restore the funds to the Heirs, Leaf was willing to enter into
9 a settlement with the Heirs, and he now has until only September of 2004 to make them whole
10 under the Settlement Agreement.

11 The Debtors' cumulative actions underscore their lack of honesty and integrity, and their
12 disregard and disdain for judicial process. Their actions began with Frank Chapin's
13 mismanagement of the funds, transferring them to the Non-Debtor Entities. The Debtors'
14 disregard of judicial process resulted in being held in contempt by the Spokane Superior Court.
15 The Debtors failed to observe the directives of this court as to the filing of tax returns and
16 providing certain accounting by late June of 2003. They sold estate assets without court
17 authority, drawing a comment from this Court that the Court may have to report their actions to
18 the United States Trustee for further referral. Their odyssey has ended in a Chapter 7 and several
19 non-discharge proceedings. Eventually, it will be proven that these Debtors' will not be allowed
20 their discharge due to their inappropriate pre-petition conduct. Until then, as evidenced by their
21 unsupportable Response to this Motion, they are going to persist in their behavior, making
22 unsupportable allegations and forcing Leaf to expend even more money to pursue his efforts to
23 recover money for the Heirs against them and the Non-Debtor Entities. These are not honest

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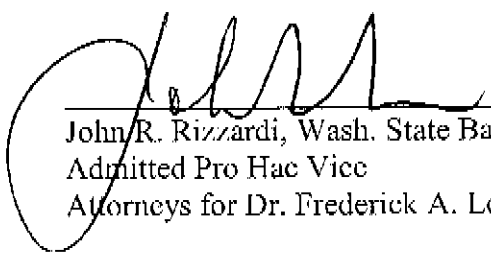
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1 Debtors. They are not the unfortunate victims of a legitimate failed enterprise or a couple
2 saddled with unexpected tragedy or unemployment. Leaf would ask this court to recall the
3 history that accompanies these Debtors as it is a telling reminder that, when confronted with the
4 truth and the effect of their own actions, these Debtors will try any desperate measure to delay,
5 obfuscate and confuse.

6 WHEREFORE, Leaf respectfully requests that the Court (1) grant the Motion, (2)
7 overrule the Objection, and (3) grant such other relief as is just and proper under the
8 circumstances.

9 DATED this 24th day of October, 2003.

10 CAIRNCROSS & HEMPELMANN, P.S.

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13 John R. Rizzardi, Wash. State Bar No. 9388
14 Admitted Pro Hac Vice
15 Attorneys for Dr. Frederick A. Leaf
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